

Jim Doyle  
Governor



201 East Washington Avenue, Room G200  
P.O. Box 8916  
Madison, WI 53708-8916

Reggie Bicha  
Secretary

**State of Wisconsin**  
**Department of Children and Families**

Telephone: 608-267-3905  
Fax: 608-266-6836  
dcf.wisconsin.gov

September 9, 2009

TO: Senate Committee on Children and Families and Workforce Development

FROM: Henry Wilde  
Deputy Secretary, Department of Children and Families

RE: Wisconsin Shares

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I want to start by thanking Senator Jauch and Representative Grigsby for proposing this important legislation and the committee for having me. I would like to start by stating clearly that as an official at the Department of Children and Families, a Wisconsin taxpayer, and an advocate for low income children and families, I am disgusted and outraged by the behavior of so called child care providers who have stolen from the Wisconsin Shares program. I have worked for the Department for 14 months, but I spent six years founding and running high quality child care centers in other states – so I am particularly aggrieved that the individuals who have manipulated the Shares program have cast a cloud over all of Wisconsin's high quality providers. Before I speak to this legislation specifically, I would like to take this opportunity to lay out in greater detail the problems related to provider fraud that during our fourteen months, we have been working to address.

**When the program legislation and rules were written in the late 1990s, criminal webs of child care providers were not imagined or anticipated. Let me give five examples:**

- 1) From the creation of the Shares program in 1996 until the budget passed in June, a provider could collect Shares payments for only serving the children of their own employees. For instance, a person could find 10 income eligible parents of young children, open a child care business, enlist those 10 people as "employees," and then receive Shares payments. What occurred instead, in such instances, was that no child care was provided. "Employees" were paid what amounted to a fee. The children brought in Shares revenue. And the so called "provider" who organized the scam took a cut off the top for every child. Today, this law has now been changed to limit the percentage of children in care than can be children of employees.
- 2) From the creation of the Shares program until the budget passed in June, a child care provider who stole from the program and sensed that the scheme might unravel could go out of business and burn their records – thereby eliminating the trail – and there were no laws that made this behavior illegal. Today, the requirement that providers maintain Shares records for three years, whether they are in business or not, is now in statute.

3) Until the budget passed in June, when licensors undertook the multiple step process of revoking licenses, providers could appeal that action, and according to rules that govern Hearings and Appeals, those providers were entitled to continue receiving Shares payments during the appeal. This could mean hundreds of thousands of dollars in payments to a provider that the Department had already revoked. Today, with the budget's new statutory language, the Department has the ability to suspend payments immediately.

4) Until the legislature authorized the creation of an automated attendance or swipe card system, there was no foreseeable manner (aside from 24 hour surveillance) for the Department to independently verify the actual attendance of children in Shares program. Right now, providers retroactively give notice to the state as to how many hours a child attended during a given week without specifying which hours. With the implementation of an automated system next year, our child care licensors will be able to identify real time whether the children being paid for are or are not in attendance.

5) Finally, as was described in the LAB audit, until Act 2 passed in 2009, there was 1.0 state FTE allocated to conduct program integrity for the nearly \$400 million Wisconsin Shares program. The creation of the Fraud Detection and Prevention Unit increased the state staffing available to fight fraud in this program by 500%. The original statutory expectations were very clearly that this program was to be operated by counties. The Department has experienced that in Milwaukee County, this operational arrangement has not been successful, which leads to my description of the second major problem related to provider fraud in the Shares program.

**Corruption in the Wisconsin Shares program is so heavily concentrated in Milwaukee County that failed efforts in fraud prevention, detection, and collection in this county plague the entire program.**

As many of you know, the Department is assuming responsibility for child care program integrity efforts in Milwaukee County, in tandem with the takeover of Milwaukee County income maintenance functions, on January 1<sup>st</sup>, 2010. You are already aware that roughly 58% of Shares expenditures, or around \$200 million per year, are spent in Milwaukee County. You are probably not aware, however, the degree to which anomalously highly paid providers are disproportionately concentrated in Milwaukee County. I would like to lay out this issue clearly with data.

Let me start by sharing the operational model of a typical child care provider. Providers are licensed to serve a certain number of slots. For simplicity's sake, imagine a provider which can serve a maximum of 8 children at any time. Several children that the provider serves only come three days per week and pay a lower rate. Others only come in the morning or afternoon and also pay a lower rate. The child care provider is pleased if they can find a Monday-Wednesday-Friday child who can be paired with a Tuesday-Thursday child or an AM child with a PM child, in which case multiple children technically share the same slot.

To give a few contextual data points, in 2004, a national for-profit firm, which operates in Wisconsin, owned approximately 165,000 licensed child care slots nationally and earned nearly one billion dollars in revenue (or \$6,000 per licensed slot). I recently met with the state's Early

Learning Coalition, a collection of leading providers, and there was general consensus that \$10-\$11K per licensed slot per year was a common, though ambitious, revenue goal, given the operational realities of the child care industry – and that serving up to 2 children per licensed slot was also an ambitious, though unlikely goal.

It is notable, then, to compare this data to Shares payments to providers. DCF has created a series of quantitative red flag reports that identify child care providers about whom we have strong suspicion of fraud based on usage and reimbursement patterns. Let me share two specific measures: Annualized Shares revenue per slot per child and number of Shares children served per slot.

Using a recent two month period, we found that 264 child care providers in Wisconsin were receiving more than \$11,000 annualized per licensed slot in Shares funding. (This calculation conservatively assumes zero private pay children.) Of those 264 providers, 263 are in Milwaukee County. We found that 87 providers were receiving more than \$15,000 per licensed slot. All 87 of those providers are in Milwaukee County.

We have also quantified the number of children being served per licensed slot by provider. In the state of Wisconsin, there are 93 providers that claimed to be serving an average of greater than 2.5 Wisconsin Shares children per slot. 90 of those providers are in Milwaukee County. Of those 93, 36 providers claimed to be serving greater than an average of 3 Wisconsin Shares children per slot. All 36 were in Milwaukee County. For anyone who has run a successful child care center, these numbers are breathtaking and if not operationally impossible, deeply unlikely. Given such data, we believe that provider fraud is significantly concentrated in Milwaukee County.

The logical question is what we are doing with this data, and the answer is that we are pursuing these leads with every available staff resource we have. We have just hired two former police officers to join our Fraud Unit, and they start this month. We will sign a contract this week with a private investigation firm to assist us in Milwaukee County investigations. We are hiring an attorney to represent us in the dozens of fair hearings that will likely result from our work. We have collected attendance records from 15-20 providers from whom we expect to identify overpayments of greater than \$50,000 each. We have revoked the licenses of Ark of Safety and Peek A Boo Child Care Centers, both of which were annualizing more than \$2 million per year in payments. The Department of Children and Families will not stop until we have rooted provider fraud out of this program.

Right now, as we pursue investigations of the providers I described, however, the Milwaukee County Child Care Program Integrity Unit is only staffed at a fraction of capacity. The Milwaukee County audit of the Shares program states that "Milwaukee County District Attorney's Office has inadequate resources to investigate and pursue prosecution of potential fraud cases identified by the Program Integrity Unit." At the same time, according to the most recent available expenditure data, the Milwaukee County Human Services Department is on pace to underspend its 2009 Shares management contract by over \$600,000 – funding that could be used to pursue fraud investigations. I want to be clear that I am not making a statement about the work of the employees in the unit that are left, as they have worked closely and collaboratively

with our Department. But there is only so much that those few people can do, and the challenge we face in Milwaukee County is formidable.

**Even when the Department finds fraud, the connection between what payments we believe to be fraudulent, what we can prove, what actions law enforcement takes, and ultimately what we can reclaim, must be strengthened:**

As the Shares program stands today, there are three ways we can prove overpayments to providers. First, we can compare paper attendance records to submissions for Shares reimbursements and find discrepancies. This is a difficult and time consuming process. As was pointed out in Milwaukee County's audit of the Shares program, Milwaukee County's Program Integrity staff spends 68% of their time reviewing attendance records. It is notable that if a criminal enterprise is thorough in its creation of fake records, this method alone can be fruitless. Second, we can place surveillance on a center, monitor the children entering and exiting, and later compare the actual attendance to the number of hours claimed. Milwaukee County and the Milwaukee Police Department have utilized this practice effectively in select instances, but it requires significant resources from the state, the county, or local law enforcement. Third, we can conduct investigations which include interviews with parents who are complicit in the scheme. Again, this is labor intensive, and requires significant resources. As I mentioned earlier, we are in the process of allocating our available resources, including the state's Fraud investigation unit and a private investigation firm, to conduct surveillance and thorough investigations.

Unfortunately, even when we are able to use one of these methods to establish overpayments, without crimes being charged or convictions achieved, which has rarely happened historically, the state has limited ability to reclaim those overpayments. Right now, the only manner in which the state can effectively collect from an incorporated provider is to deduct funds from future payments. In other words, if we find fraud and revoke that provider's license, we could only collect from them were we to leave them in business to receive more Shares payments! That is why this legislation is so crucial.

This bill will allow the Department of Children and Families to drastically improve collections from child care providers who owe the Wisconsin Shares program when they go out of business – akin to the way we collect from individual participants who defraud the system. Pursuit and collection of child care recipient fraud – as opposed to provider fraud – is less labor intensive, and we are already able to utilize multiple collection methods simultaneously including state tax offset, wage levy, and property liens to collect these debts. This legislation will allow the utilization of these same collection methods for incorporated providers.

I would like to thank Representative Grigsby and Senator Jauch for their continued work on this important issue. I would also like to thank the bi-partisan group of cosponsors of this legislation. Again, I would urge the Committee to ask questions of subsequent witnesses to confirm the analysis that I have shared here today – and I am happy to meet with you subsequent to this hearing to further discuss the Department's work on this important issue.



**Tamara D.  
GRIGSBY**

Wisconsin State Representative  
18th Assembly District

*Member, Joint Committee on Finance  
Chair, Committee on Children and Families*

**Testimony Before the  
Senate Committee on Children and Families and  
Workforce Development  
September 9, 2009  
Senate Bill 280**

I want to thank Chairperson Jauch for scheduling a hearing so quickly on this bill, and for his leadership in authorizing this important piece of legislation.

We've all read with disgust and disbelief the stories in the Milwaukee Journal Sentinel about the egregious fraud that has been perpetrated upon the Wisconsin Shares program. When these stories first broke last January, Senator Jauch and I were joined by 30 of our colleagues in calling for full financial and programmatic audit of this program.

In addition, we began working earnestly with officials at the Department of Children and Families (DCF) to identify provisions in current law that needed to be changed so they have the tools necessary to prevent the type of fraud that has been reported. Additionally, some provisions in current law prevent them from recovering overpayments once they have been identified. Senate Bill 280 addresses this last point specifically.

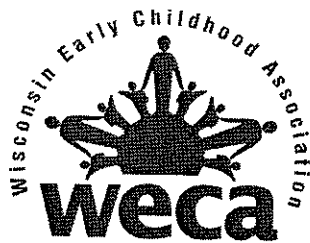
Currently there is no specific legal linkage between the ownership of a child care business and debts, including Wisconsin Shares subsidy overpayments. Although commerce laws establish that all non-corporate businesses attach their financial liabilities to the owner(s), there may still be confusion surrounding the ability of the Department to attach liability for child care overpayments to the individual(s) who own the child care business. Additionally, commerce laws typically protect the owner(s) of a corporation from financial liability when the corporation dissolves, thus an incorporated provider can currently dissolve their business and escape any liability for overpayments. This has happened in a couple of high profile child care fraud cases outlined by the Journal Sentinel.

Senate Bill 280 is modeled after statutory language for Unemployment Insurance enforcement of penalties which directly links financial liability related to child care overpayments to the owner(s) of the child care business regardless of the form of ownership (sole-proprietor, partnership, LLC, or corporation). This provision applies to any individual who has an ownership interest of 20% or more in that child care business. This will allow the Department to pursue the collection of overpayments even when the "business" has been dissolved.

This bill will help eliminate one of the roadblocks the Department currently faces in its efforts to effectively deal with the unscrupulous child care providers whose sole intention is to defraud a program meant to assist low income individuals obtain and maintain employment.

I thank the committee for your time and consideration of this matter.





## Testimony on Senate Bill 280/ Assembly Bill 412

Senator Jauch, Representative Grigsby, and members of the *Senate Committee on Children and Families and Workforce Development and the Assembly Committee on Children and Families*— I would like to thank you for the opportunity to speak today in support of Senate Bill 280 and Assembly Bill 412. My name is Mary Babula and I am speaking on behalf of Wisconsin Early Childhood Association. As a professional association promoting excellence in early childhood programs, we are as appalled as many are by the recent reports of fraud within the Wisconsin Shares child care subsidy programs. We are also keenly aware that these reports do NOT tell the complete story of child care in Wisconsin. We know that fraud is costing the state millions of taxpayer dollars, but we also know that 95% of child care subsidies are going to providers who are following the rules. Every day thousands of honest child care providers bring their best selves to the service of children and families, approaching their work with dedication to the well-being of others, a commitment of service to their communities, and a love for young children.

The unfortunate truth is that the kind of fraud being uncovered undermines the good work of these early childhood professionals. In a time when we are trying to redefine the world view of our work from that of babysitter to one of early childhood educator, this is a sad truth. Because the field is characterized by low wages and inadequate benefits, a provider's integrity and self-respect becomes an important commodity to hold on to. So we take a stand against fraud where it is intentional, and we support a bill that expands personal liability for such fraudulent behavior for the following three reasons:

First of all, it is our hope that this bill will inspire all child care programs to improve their business practices in a way that ensures that there are checks and balances within accounting systems so no one person can commit fraud, recklessly endangering a program that children and families count on and jeopardizing the jobs of others.

Secondly, given the underfunded nature of child care in general and the immense demands on the Wisconsin Shares program due to the current economic crisis, we want every single public dollar to be invested wisely. WECA awaits the day when there is enough money to guarantee that all children have access to high quality early childhood programs, especially those from low income families who have the most to gain in terms of future success and school readiness. Money saved on curbing fraud must support quality improvements including implementing a quality rating and improvement system that offers incentives to high-quality providers and resources to those who wish to improve.

Finally, we have faith that the Department of Children and Families has put in place and will continue to put in place mechanisms to identify fraud earlier and prevent it whenever possible. Developing the Program Integrity Unit is a major step in this direction and one that we firmly stand behind.

WECA urges the Committee on Children and Families and Workforce Development to support passage of Senate Bill 280 and Assembly Bill 412.







**Testimony of John Grabel**  
AFSCME Council 11 Government Relations  
**In Favor of Senate Bill 280**  
**Senate Committee on Children and Families and Workforce Development**  
September 8<sup>th</sup>, 2009

Chairman Jauch, members of the committee, thank you for the opportunity to speak here today. AFSCME Council's 40 and 48, representing approximately 1,800 Family Child Care Providers throughout Wisconsin, would like to register their support of Senate Bill 280.

On going reports of fraud and abuse of the Wisconsin Shares program continues to cause great concern for our members. As you know the past two state budgets have posed a significant challenge for state lawmakers as a sluggish national economy places an increasing strain on this vital program. The providers we represent know all too well the hardships families across the state are facing as they try to make ends meet. Many Family Child Care Providers forego co-payments for Wisconsin Shares participants as they know this additional financial burden simply doesn't fit within the parent or guardian's budget. This occurs even as a considerable number of Family Child Care Providers are struggling to make ends meet themselves. Providers, who have seen their reimbursement rates under Wisconsin Shares frozen since 2006, are having to find more and more creative ways to provide not just physical care, but a quality educational experience for the children for whom they take responsibility, all with diminishing resources.

The challenges of the last two budgets have also hampered the ability of the state to move forward with a Quality Ratings Incentive System. A QRIS that provides clear guidelines for how providers can achieve improvements in the quality of their programs and also creates an incentive for them to do so is strongly supported by our union. Unfortunately, increasing enrollment in Wisconsin Shares and a scarcity of resources has left just enough dollars to cover the costs of those in need of the program.

With this as the background, the findings by the Legislative Audit Bureau in phase one of their audit of the Wisconsin Shares program was extremely alarming to AFSCME Family Child Care Providers. The fact that up to \$18 million in improper Wisconsin Shares payments were made in 2008, including substantial fraudulent payments, is frustrating for hard working and dedicated providers across the state. This is why AFSCME has supported so many of the reforms enacted in recent months to curtail abuses and misappropriations in the Wisconsin Shares program, and why we are here supporting this bill today.

AFSCME believes the provisions we supported that were contained in the state budget and the state stimulus bill passed earlier this year are critical to reforming Wisconsin Shares. The new authorization based attendance system will result in automatic adjustments to the amount of time each child is authorized for care, making authorizations more accurate and reflective of need and putting subsidy dollars to better use. The creation of the program integrity unit will allow DCF to identify improper payments and correct errors. The 40% threshold of relationship between employees and children in child care programs will be a significant tool to curtail child care rings. The eventual development of a QRIS system will mark substantial gains in quality, making high end care more available to parents in Wisconsin Shares and reducing the number of providers aiming to abuse the



system. In addition to these changes, AFSCME continues to meet with the Department of Children and Families about possible solutions to improve the Shares program, including a working group designed to improve the trainings and materials for providers caring for Wisconsin Shares participants, as well as for caseworkers making sure parents and providers are in compliance.

Yet, with all of these gains, AFSCME believes the issue of fraud remains the most troubling. While parent, provider, county or department error are unavoidable in a program the size of Wisconsin Shares, and every effort should be made to minimize those errors, they are at least an understandable, if undesirable byproduct of such a broad and complex program. However, intentional fraud, especially of a program designed to provide assistance to some of the most vulnerable people of the state is gravely distressing to AFSCME Family Child Care Providers.

SB 280 will grant DCF powers to act where the department is currently limited in its reach. While current law does not offer protections to persons who would deliberately defraud the state, it has been made clear to AFSCME that the intersecting lines of jurisdiction when someone commits fraud offer a great deal of protection for individuals looking to game the system. Between workloads of DCF staff and county workers, combined with the demands on district attorneys and the decisions they must make in how they allocate their resources, there are too many ways for individuals to cheat the system and avoid authority when defrauding the program. By drawing a direct link, and making persons who are 20% or greater owners in a corporation or LLC individually liable for fraudulently obtained payments, and granting DCF the ability to recover those payments even if the proprietors dissolve the corporation or LLC, we believe you will be creating some important tools to protect the integrity of the program. Along with that, AFSCME believes you will have gone a long ways towards restoring the reputations of legitimate providers, many of whom are unfairly assumed of committing fraud because of the current failures of the system.

I would like to thank Senator Jauch and Representative Grigsby for bringing this important legislation forward and AFSCME urges the members of the committee to recommend SB 280 for passage. Thank you, and I'll be happy to take any questions.



Testimony- Joint Audit Committee

Senate Bill 280

September 9, 2009

George Hagenauer

2200 Dahlk Circle

Verona Wi . 53593

[yellowkd@terracom.net](mailto:yellowkd@terracom.net)

For the past several years, the State of Wisconsin has reduced efforts to improve child care, shorted higher quality accredited child care programs serving children on Wisconsin Shares, and in some areas frozen funding for regulation and oversight of child care in order to shore up the Wisconsin Shares subsidy system.

And this year we discovered that these efforts were being undermined by a small group of providers who were using regulatory weaknesses in the system to profit from thousands of dollars that in effect they did not deserve or earn by caring for Shares children.

In Dane County 4-C does the regulation of small certified and provisional family child care homes. These homes accounted for just 20% of the children receiving Wisconsin Shares subsidies in 2008. When I looked at the providers we revoked- with questionable reimbursements as one factor in the revocation- during a 34 month period it came to over \$300, 000 per year.

**That money is equal to 43% of the funds needed to raise the Shares reimbursement rate to the real market rate for all of the Shares children in accredited care in Dane County where most rates have been frozen for 4 years. The money given to a handful of providers (4 accounted for most of it) would have been more than the funds needed to pay a full market rate to all of the children birth to 3 on Wisconsin Shares in accredited programs in Dane County- that was 439 children in the March 2008.**

So any efforts like Senate Bill 280 to recoup these funds in order to apply them to other pressing needs in the field needs to be supported. We operate in a field where there is a severe shortage of funds to support those programs that have invested in creating high quality child care for children from low income families who cannot afford to pay for it. Child care support services needed to improve the field have been cut massively over the past 6 years so that programs who want to improve often have limited access to training , support and grants to help them.

Recouping funds lost to fraud and overpayments however is not enough. It is important to strengthen the regulations so that potential problem cases do not develop. You need to look at the rules for criminal background checks especially for Directors, owners and family child care providers. This is not only for improving fiscal integrity but also the basic safety of children. We should not have rehab options for people convicted of crimes like 1<sup>st</sup> 2<sup>nd</sup> or 3<sup>rd</sup> degree sexual assault, Sexual exploitation of a child or repeated acts of violence, child neglect resulting in death or many other serious crimes now allowed for rehab review for child care providers. While it is good to focus on white collar crimes involving other forms of fraud, I urge you for the sake of the state's youngest citizens to strengthen all of the criminal background regulations so that instead of recouping funds that have been absconded we can be excluding potential problem cases before they can do harm. In many cases the cost of later addressing the problems caused by abusive or low quality care far exceeds the funds lost so far to the subsidy system.



Let me close with an example that I heard from my daughter this weekend. She was in town visiting and looked up a friend. He was working as a cab driver in Madison several months ago when two teens flagged him down got into his cab, tossed a noose around his neck and pummeled him unconscious. It was a gang initiation- the violence was totally random , no money was taken.

My daughter's friend spent a month in the hospital- a lot of it in intensive care. Since he was uninsured that was paid for by the state- I would guess probably about a quarter to a third of a million given costs these days. Fortunately they kept him from being paralyzed for life which would have been another several hundreds of thousands of dollars in disability payments. Two youth were caught and charged with the crime. I am not sure if they have been convicted – if they are I would hope they receive 20 or more years in jail- another half million or more. (and when released they will be eligible for a rehab review to do family child care).

Those are the numbers in dollars and cents from one incident. It would have been far better that the two young men involved had had some type of early intervention, everything we know indicates that they probably went through abuse and deprivation as children and had limited interaction with positive adults. Our current system of child care does not consistently create that environment- one that catches abuse, provides remedial help for deficiencies at home , and provides a consistent caring adult as a role model. That takes skilled child care providers with a desire to learn and improve and who have access to an income that provides self-sufficiency and support services that help them succeed.

That all starts with what standards you set for the people who do these critical jobs. And there are many good people across the state who deserve standards that reflect their commitment to the state's children. They currently work in a system with 8-10% of the providers not doing good work and that reflects badly on the people who do.

So do your job well on the standards and regulations – there is a lot more at stake here than dollars and cents.

